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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS A. BULLEIT,
KEITH O. COWAN, and
BARBARA RODEN

Appeal 2009-009594
Application 10/652,815
Technology Center 3600

Decided: March 12, 2010

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Douglas A. Bulleit, et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-40. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.[1]

THE INVENTION

The invention is drawn to methods, systems, and computer program products for allocating costs in using a broadband communication network.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A method of operating a broadband communication network, comprising:
>
> establishing a communication flow between a network access terminal and a site using the broadband communication network; and
>
> allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.

[1] Our decision will make reference to the Appellants' Appeal Brief ("Br.," filed Apr. 28, 2008) and the Examiner's Answer ("Answer," mailed May 14, 2008).

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Roden	US 5,970,477	Oct. 19, 1999
Kung	US 6,775,267 B1	Aug. 10, 2004

The following rejections are before us for review:

1. Claims 1, 2, 4-14, 16-18, 20-30, and 32-40 are rejected under 35 U.S.C. §102(b) as being anticipated by Roden.[2]
2. Claims 3, 15, 19, and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Roden and Kung.

ISSUES

The issue with respect to the rejection of claims 1, 2, 4-14, 16-18, 20-30, and 32-40 under 35 U.S.C. §102(b) as being anticipated by Roden is whether Roden describes, expressly or inherently, a

> broadband network communication network. As shown in FIG. 2 of Roden, a user accesses an Internet site 18 through a modem pool 32, which provides a narrowband connection. By contrast, as shown in FIG. 2 of the present Specification, a broadband access node 210 may provide a user with a broadband connection to access an Internet site 208.

Br. 12 (emphasis original).

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[2] There is a discrepancy between the claims indicated as rejected under §102 in the Final Rejection (claims 1-40) and the Answer (1, 2, 4-14, 16-18, 20-30, and 32-40). It appears the Examiner inadvertently included claims 3, 15, 19, and 31 in the statement of the §102 rejection in the Final Rejection because the body of the rejection, while separately addressing the claims, addresses only claims 1, 2, 4-14, 16-18, 20-30, and 32-40.

The issue with respect to the rejection of claims 3, 15, 19, and 31 under 35 U.S.C. §103(a) as being unpatentable over Roden and Kung is whether the combination of Roden and Kung would lead one of ordinary skill in the art to allocate costs between end user and another party based on the level and/or quality of service provided to the end user. "Appellants do not disagree that Kung teaches billing for a communication service based on the level and/or quality of service provided. Appellants submit, however, that Kung teaches that all the costs for the connection service are billed to the end user." Br. 14 (emphasis original).

FINDINGS OF FACT

We rely on the Examiner's factual findings. Answer 3-8.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

> Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations

including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.") The Court in *Graham* further noted that evidence of secondary considerations "might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." *Graham*, 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1, 2, 4-14, 16-18, 20-30, and 32-40 under 35 U.S.C. §102(b) as being anticipated by Roden.

The Appellants argued claims 1, 2, 4-14, 16-18, 20-30, and 32-40 as a group (Br. 12). We select claim 1 (*see supra*) as the representative claim for this group, and the remaining claims 2, 4-14, 16-18, 20-30, and 32-40 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellants argue that the Examiner has failed to establish a prima facie case of anticipation because Roden fails to describe, expressly or inherently, a broadband network communication network as claimed. According to the Appellants, Roden describes, in contrast, a "narrowband" connection.

The argument is not persuasive.

Claim 1 requires "establishing a communication flow between a network access terminal and a site using the broadband communication network."

The Specification does not provide an express definition for the claim term "broadband." Accordingly, the claim term "broadband" is to be given its ordinary and customary meaning, which, in computer-parlance, is "[i]n local area networks (LANs), an analog communications method characterized by high bandwidth." *Webster's New World Dictionary of Computer Terms* (8th Ed. 2000) 75 (Entry for "broadband.")

Roden expressly describes various types of communication networks between a network access terminal and an Internet site.

> Between an individual end-user and a local access provider's point of presence lies a communications network, *such as a telephone network, a cable television network, a wireless communications network, or the like*. This communications network is typically operated by a for-profit enterprise. An end-user therefore pays a cost for using the communications network. In the United States, most homes and businesses are already connected to a telephone network. These telephone networks are therefore convenient options for end-users desiring communication channels with the Internet. Other communications networks, however, may equivalently be used to provide Internet access.

Col. 3, ll. 14-25. Emphasis added. They can also include "a local area network (LAN), a wide area network (WAN), Ethernet, Appletalk, or the like." Col. 10, ll. 35-37.

Cable television networks and Ethernets communicate at a high bandwidth. See *Webster's New World Dictionary of Computer Terms* (8th Ed. 2000) 83, entry for "cable modem", "[c]able modems enable Internet access speeds of up to 1.5 Mbps", and 195, entry for "ethernet", "Ethernet provides for a raw data transfer rate of 10 Mbps, with actual throughput in the range of 2-3 Mbps." These speeds and transfer rates are comparable to those for a T1 line, which Roden discusses with respect to Internet sites (col.

2, ll. 49-53: "optical, fiber, wireless, and leased telephone lines ranging from 56 kilo-bits-per-second to 1.544 mega-bits-per-second (T1) are typical options available to an Internet site."). T1 lines operate at high bandwidth. See *Webster's New World Dictionary of Computer Terms* (8th Ed. 2000) 523, entry for "T1". "A high-bandwidth telephone trunk line that is capable of transferring 1.544 Mbps of data."

Accordingly, in contradistinction to the Appellants' argument, Roden expressly describes types of communication networks between a network access terminal and an Internet site that operate at a high bandwidth. Accordingly, we find that Roden *does* expressly describe "establishing a communication flow between a network access terminal and a site using the broadband communication network" (claim 1) as claimed.

We will therefore sustain the rejection of claim 1, and of claims 2, 4-14, 16-18, 20-30, and 32-40 which stand or fall with claim 1.

The rejection of claims 3, 15, 19, and 31 under 35 U.S.C. §103(a) as being unpatentable over Roden and Kung.

The Appellants argued claims 3, 15, 19, and 31 as a group (Br. 12). We select claim 3 as the representative claim for this group, and the remaining claims 15, 19, and 31 stand or fall with claim 3. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellants' argument challenging the prima facie case of obviousness is not persuasive.

The Appellants argue that Kung does not teach allocating costs between end user and another party based on the level and/or quality of service provided to the end user. We agree that Kung does not expressly

disclose *allocating* costs *per se*. But this is a rejection under §103. "The question in a §103 case is what the references would collectively suggest to one of ordinary skill in the art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972)." *In re Ehrreich*, 590 F.2d 902, 909 (Emphasis original.) In that regard, the Appellants concede that "Roden describes allocating costs between different entities" (Br. 12) and that "Kung teaches billing for a communication service based on the level and/or quality of service provided" (Br. 14; *see also* Br. 13).

The question is whether one of ordinary skill in the art would have been led to the claimed method of allocating costs between end user and another party based on the level and/or quality of service provided to the end user given Roden's allocating costs between different entities and Kung's billing for a communication service based on the level and/or quality of service provided would lead. The Examiner's position is that one of ordinary skill in the art would have. We see no difficulty with that position, especially as there is no dispute that Roden discloses allocating costs between different entities and Kung discloses billing for a communication service based on the level and/or quality of service provided. The claimed method appears to be simply a matter of combining these disclosures. "[W]hen a patent "simply arranges old elements with each performing the same function it had been known to perform" and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR, 550 U.S. at* 417 (*quoting Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). In that regard, the Appellants have not come forward with any objective evidence of secondary considerations for our consideration.

Accordingly, we find that the prima facie case of obviousness for the

subject matter of any of claims 3, 15, 19, and 31 over Roden and Kung has not been overcome and therefore the rejection will be sustained.

CONCLUSIONS

The prima facie case of anticipation established by the Examiner in rejecting claims 1, 2, 4-14, 16-18, 20-30, and 32-40 under 35 U.S.C. §102(b) as being anticipated by Roden has not been overcome.

The prima facie case of obviousness established by the Examiner in rejecting claims 3, 15, 19, and 31 under 35 U.S.C. §103(a) as being unpatentable over Roden and Kung has not been overcome.

DECISION

The decision of the Examiner to reject claims 1-40 is affirmed.

AFFIRMED

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